

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In Re Application of:

Walker, et al.

Serial No.: 09/893,112

Filed: June 27, 2001

Confirmation No.: 4872

Group Art Unit: 2452

Examiner: Doan, Duyen

Docket No. 10005039-1

For: **System and Method for Providing Access to a Resource**

**APPEAL BRIEF UNDER 37 C.F.R. § 41.37**

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Sir:

This Appeal Brief under 37 C.F.R. § 41.37 is submitted in support of the Notice of Appeal filed January 8, 2009, responding to the Final Office Action mailed October 16, 2008.

It is not believed that extensions of time or fees are required to consider this Appeal Brief. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor are hereby authorized to be charged to Deposit Account No. 20-0778.

### **I. Real Party in Interest**

The real party in interest is Hewlett-Packard Development Company, LP, a limited partnership established under the laws of the State of Texas and having a principal place of business at 20555 S.H. 249 Houston, TX 77070, U.S.A. (hereinafter "HPDC"). HPDC is a Texas limited partnership and is a wholly-owned affiliate of Hewlett-Packard Company, a Delaware Corporation, headquartered in Palo Alto, CA. The general or managing partner of HPDC is HPQ Holdings, LLC.

### **II. Related Appeals and Interferences**

There are no known related appeals or interferences that will affect or be affected by a decision in this Appeal.

### **III. Status of Claims**

Claims 7-11 and 17-19 have been canceled leaving claims 1-6 and 12-16 remaining. Each of those claims stand finally rejected. No claims have been allowed. The final rejections of claims 1-6 and 12-16 are appealed.

### **IV. Status of Amendments**

No amendments were made subsequent to the final Office Action. The claims in the attached Claims Appendix (see below) reflect the present state of the claims.

## **V. Summary of Claimed Subject Matter**

The claimed inventions are summarized below with reference numerals and references to the written description (“specification”) and drawings. The subject matter described in the following appears in the original disclosure at least where indicated, and may further appear in other places within the original disclosure.

Independent claim 1 describes a method for providing a client on a remote client network access to a service provider resource on a local service provider network. The method comprises providing a graphical user interface (GUI) that enables an operator of the service provider to construct virtual local area networks (VLANs) between clients on remote client networks and service provider computers on the service provider network using a process that is the same regardless of configurations of the remote client networks. *Applicant’s specification*, page 8, lines 15-21; page 11, lines 18-20; Figure 4, item 402. The method of claim 1 further comprises receiving commands of the service provider operator with the GUI that convey the identity of a particular client and a particular service provider computer to be accessed by the client. *Applicant’s specification*, page 12, lines 4-19. The method of claim 1 further comprises automatically determining a configuration of the client’s network. *Applicant’s specification*, page 13, lines 8-19; Figure 5, items 502-504. The method of claim 1 further comprises automatically establishing a VLAN between the client’s network and the service provider computer to enable the client to remotely utilize the computing capabilities of the service provider computer. *Applicant’s specification*, page 13, line 20 to page 15, line 8; Figure 5, item 506. The above actions are then repeated for multiple different clients having different network configurations.

Independent claim 12 describes a computer readable storage comprising a program configured to provide a client on a remote client network access to a service provider resource on a local service provider network. The program comprises logic configured to provide a graphical user interface (GUI) to an operator of the service provider, the GUI being configured to enable the service provider operator to construct virtual local area networks (VLANs) between clients on the remote client network and service provider computers on the service provider network using a process that is the same regardless of the configurations of the remote client networks. *Applicant's specification*, page 8, lines 15-21; page 11, lines 18-20; Figure 4, item 402. The program further comprises logic configured to receive commands of the service provider operator with the GUI that convey the identity of a particular client and a particular service provider computer to be accessed by the client. *Applicant's specification*, page 12, lines 4-19. The program further comprises logic configured to automatically determine the configuration of the client's network. *Applicant's specification*, page 13, lines 8-19; Figure 5, items 502-504. The program further comprises logic configured to automatically establish a VLAN between the client's network and the service provider computer to enable the client to remotely utilize the computing capabilities of the service provider computer. *Applicant's specification*, page 13, line 20 to page 15, line 8; Figure 5, item 506.

## **VI. Grounds of Rejection to be Reviewed on Appeal**

The following grounds of rejection are to be reviewed on appeal:

1. Claims 1-4, 6, and 12-16 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over *Pugaczewski, et al.* ("Pugaczewski," U.S. Pat. No. 6,903,755) in view of *Hsieh, et al.* ("Hsieh," U.S. Pub. No. 2002/0158900).

2. Claim 5 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over *Pugaczewski* and *Hsieh* as applied to claim 4, and further in view of *McNally, et al.* ("McNally," U.S. Pat. No. 6,259,448).

## **VII. Arguments**

The Appellant respectfully submits that Applicant's claims are not obvious under 35 U.S.C. § 103, and respectfully requests that the Board of Patent Appeals overturn the final rejections of those claims at least for the reasons discussed below.

### **Claim Rejections - 35 U.S.C. § 103(a)**

As has been acknowledged by the Court of Appeals for the Federal Circuit, the U.S. Patent and Trademark Office ("USPTO") has the burden 35 U.S.C. § 103 to establish obviousness by showing objective teachings in the prior art or generally available knowledge of one of ordinary skill in the art that would lead that individual to the claimed invention. *In re Fine*, 837 F.2d 1071, 1074, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). The key to supporting an allegation of obviousness under 35 U.S.C. § 103 is the clear articulation of the reasons why the Examiner believes that claimed invention would have been obvious. See MPEP § 2141. As stated by the Supreme Court, "[r]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR v. Teleflex*, 550 U.S. at \_\_\_, 82 USPQ2d at 1396 (quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)).

Applicant respectfully submits that the Examiner has not established that Applicant's claims are obvious in view of the prior art. Applicant discusses those claims in the following.

## **A. Rejection of Claims 1-4 and 6-16**

Claims 1-4, 6, and 12-16 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over *Pugaczewski, et al.* ("Pugaczewski," U.S. Pat. No. 6,903,755) in view of *Hsieh, et al.* ("Hsieh," U.S. Pub. No. 2002/0158900). Applicant respectfully traverses.

### **1. The Pugaczewski Reference**

Pugaczewski discloses a network management system and graphical user interface for configuring a network connection between first and second service access points. *Pugaczewski*, Abstract.

### **2. The Hsieh Reference**

Hsieh discloses a graphical user interface for network management of devices associated with different customer infrastructures. *Hsieh*, Abstract.

### **3. Applicant's Claims**

Independent claim 1 provides as follows:

1. A method for providing a client on a remote client network access to a service provider resource on a local service provider network, the method comprising the following actions:

(a) providing a graphical user interface (GUI) that enables an operator of the service provider to construct virtual local area networks (VLANs) between clients on remote client networks and service provider computers on the service provider network using a process that is the same regardless of the configurations of the remote client networks;

(b) receiving commands of the service provider operator with the GUI that convey the identity of a particular client and a particular service provider computer to be accessed by the client;

(c) automatically determining the configuration of the client's network;

(d) automatically establishing a VLAN between the client's network and the service provider computer to enable the client to remotely utilize the computing capabilities of the service provider computer; and

(e) repeating actions (b) through (d) for multiple different clients having different network configurations, the process used by the service provider operator to construct the VLAN using the GUI being the same regardless of the different network configurations.

The Examiner argued in the final Office Action that Pugaczewski discloses each limitation of claim 1, except for connecting a customer and service provider with a VLAN. Applicant respectfully disagrees. In particular, Applicant respectfully submits that Pugaczewski fails to disclose or suggest other limitations of claim 1, which Hsieh also fails to disclose or suggest. Applicant discusses those limitations in the following paragraphs.

On pages 4 and 5 of the Office Action, the Examiner argued that Pugaczewski discloses providing a graphical user interface (GUI) that enables an operator of a service provider to construct a connection between clients on remote client networks and service provider computers on a service provider network "using a process that is the same regardless of the configurations of the remote client networks". Furthermore, on page 5, the Examiner argued that Pugaczewski discloses constructing connections between "multiple different clients having different network configurations, the process used by the service provider operator to construct the VLAN using the GUI being the same regardless of the different network configurations". In support of those



arguments, the Examiner cited the Abstract of the Pugaczewski reference, which provides:

A network management system and graphical user interface for configuring a network connection between first and second service access points utilizes a configuration manager and information manager to provide a generic set of models so that different manufacturer's nodal processors and other network hardware can be inserted into the network with minimal changes to the software which controls the device. The system comprises an information manager including routing information for the network. The configuration manager operates to establish a connection across each subnet on the route by sending requests to element managers to program the subnet elements.

*Pugaczewski, Abstract.* As can be appreciated from the above excerpt, Pugaczewski discloses “a generic set of models so that different manufacturer's nodal processors and other network hardware can be inserted into the network with minimal changes to the software which controls the device”. Clearly, the mere identification of “a generic set of models” is *not* a disclosure of using a GUI to construct VLANs (or other connections) between “multiple different clients having different network configurations, *the process used by the service provider operator to construct the VLAN* using the GUI being the same regardless of the different network configurations” (emphasis added). Applicant notes that the Examiner provides no explanation as to how Pugaczewski's mention of “a generic set of models” equates to or is suggestive of the process used by an operator to be the same regardless of network configuration. Accordingly, the Examiner has not provided any “articulated reasoning” to support the Examiner's conclusion of

obviousness. Instead, the Examiner has simply block-copied Applicant's claim limitation and identified text contained within the Pugaczewski reference. Applicant therefore asserts that the Examiner has failed to state a prima facie case of obviousness.

As a further matter, the Examiner's failure to explain how Pugaczewski discloses or suggests Applicant's limitations has denied Applicant an opportunity to understand the reasons why Applicant's claims have been rejected and, therefore, has likewise denied Applicant an opportunity to properly respond to the rejections. As stated in MPEP 706.07, "[t]he Examiner should never lose sight of the fact that in every case the applicant is entitled to a full and fair hearing, and that a clear issue between applicant and examiner should be developed, if possible, before appeal." In this case, no "clear issue" has been developed by the Examiner.

In view of the above, Applicant respectfully submits that claims 1-4 and 6 are allowable over the Pugaczewski/Hsieh combination. Given that independent claim 12 contains limitations similar to those described above, Applicant further respectfully submits that claims 12-16 are likewise allowable over Pugaczewski/Hsieh. Applicant therefore respectfully requests that the rejections of claims 1-4, 6, and 12-16 be reversed.

#### **B. Rejection of Claim 5**

Claim 5 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over *Pugaczewski* and *Hsieh* as applied to claim 4, and further in view of *McNally, et al.* ("McNally," U.S. Pat. No. 6,259,448). Applicant respectfully traverses the rejection.

As identified above, Pugaczewski and Hsieh do not teach aspects of Applicant's claims. In that McNally does not remedy the deficiencies of the Pugaczewski and Hsieh

references, Applicant respectfully submits that claim 5 is allowable over the Pugaczewski/Hsieh/McNally combination for at least the same reasons that claim 1 is allowable over Pugaczewski/Hsieh.

### **VIII. Conclusion**

In summary, it is Applicant's position that Applicant's claims are patentable over the applied prior art references and that the rejection of these claims should be withdrawn. Appellant therefore respectfully requests that the Board of Appeals overturn the Examiner's rejection and allow Applicant's pending claims.

Respectfully submitted,

By:

  
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**Claims Appendix under 37 C.F.R. § 41.37(c)(1)(viii)**

The following are the claims that are involved in this Appeal.

1. A method for providing a client on a remote client network access to a service provider resource on a local service provider network, the method comprising the following actions:

(a) providing a graphical user interface (GUI) that enables an operator of the service provider to construct virtual local area networks (VLANs) between clients on remote client networks and service provider computers on the service provider network using a process that is the same regardless of configurations of the remote client networks;

(b) receiving commands of the service provider operator with the GUI that convey the identity of a particular client and a particular service provider computer to be accessed by the client;

(c) automatically determining a configuration of the client's network;

(d) automatically establishing a VLAN between the client's network and the service provider computer to enable the client to remotely utilize the computing capabilities of the service provider computer; and

(e) repeating actions (b) through (d) for multiple different clients having different network configurations, the process used by the service provider operator to construct the VLAN using the GUI being the same regardless of the different network configurations.

2. The method of claim 1, wherein the GUI comprises lists of clients and available service provider computers.

3. The method of claim 2, wherein receiving commands comprises first receiving selection of a client for which connectivity is to be provided.

4. The method of claim 2, wherein receiving commands comprises detecting association of a service provider computer with a client VLAN.

5. The method of claim 4, wherein association of a service provider computer with a client VLAN is communicated with the GUI by dragging the service provider computer and dropping it on the client VLAN.

6. The method of claim 1, wherein determining the configuration of the client network comprises accessing a connectivity database that stores the client network configurations.

7-11. (Canceled)

12. A computer readable storage comprising a program configured to provide a client on a remote client network access to a service provider resource on a local service provider network, the program comprising:

logic configured to provide a graphical user interface (GUI) to an operator of the service provider, the GUI being configured to enable the service provider operator to construct virtual local area networks (VLANs) between clients on the remote client network and service provider computers on the service provider network using a process that is the same regardless of the configurations of the remote client networks;

logic configured to receive commands of the service provider operator with the GUI that convey the identity of a particular client and a particular service provider computer to be accessed by the client;

logic configured to automatically determine the configuration of the client's network; and

logic configured to automatically establish a VLAN between the client's network and the service provider computer to enable the client to remotely utilize the computing capabilities of the service provider computer.

13. The computer readable storage of claim 12, wherein the GUI comprises lists of clients and available service provider computers.

14. The computer readable storage of claim 13, wherein the logic configured to receive commands comprises logic configured to receive selection of a client for which connectivity is to be provided.

15. The computer readable storage of claim 14, wherein the logic configured to receive commands further comprises logic configured to detect association of a service provider computer with a client VLAN.

16. The computer readable storage of claim 12, wherein the logic configured to determine the configuration of the client network comprises logic configured to access a connectivity database that stores the client network configurations.

17-19. (Canceled)



**Evidence Appendix under 37 C.F.R. § 41.37(c)(1)(ix)**

There is no extrinsic evidence to be considered in this Appeal. Therefore, no evidence is presented in this Appendix.

**Related Proceedings Appendix under 37 C.F.R. § 41.37(c)(1)(x)**

There are no related proceedings to be considered in this Appeal. Therefore, no such proceedings are identified in this Appendix.